

JUL 03 2006

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	John Mark Zetts	Examiner:	Boccio, Vincent F
Serial No.	09/850,253	Group Art Unit:	2616
Filed:	May 7, 2001	Docket No.	STL920000106U S1
Title:	SYSTEM AND METHOD OF TIMECODE REPAIR AND SYNCHRONIZATION IN MPEG STREAMS		

CERTIFICATE UNDER 37 CFR 1.6(d)

I hereby certify that this correspondence is being transmitted, via facsimile only, to Facsimile No. 571/273-8300 on July 3, 2006.

  
Sandra ParkerRENEWED PETITION FOR REVIVALUnder 37 CFR 1.137(a) and 1.137(b)

Attention: Office of Petitions  
Mail Stop Petitions  
Commissioner for Patents  
P.O. BOX 1450  
Alexandria, VA 22313-1450

RECEIVED

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OFFICE OF PETITIONS

Sir:

Please accept this Request for Reconsideration of the Petition for Revival of this application mailed within the statutory two months. It is very much appreciated and accepted with gratitude that in the telephonic conference, held on May 24, 2006, the Senior Petitions Attorney Ms. Nancy Johnson, who dismissed, on May 2, 2006, the first Petition for Revival filed on December 22, 2005, promised to revive and reinstate this patent application under one of the three available methods: a) for Wrongful Abandonment due to egregious USPTO errors, b) for Patent Abandoned Unavoidably under 37 CFR 1.137(a) and for c) Patent Abandoned Unintentionally

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under 37 CFR 1.137(b), if necessary, which are all petitioned and argued herein in the alternative.

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STATEMENT OF FACTS

OFFICE OF PETITIONS

1. Original Notice of Allowability, dated 6/17/2006, was severely defective on many counts and only allowed the original 30 claims, filed on 5/7/2001. Preliminary Amendment, dated 6/29/2001, had additional 24 claims which were not even mentioned in the original Notice of Allowability.
2. Applicant's attorney diligently placed numerous phone calls to Examiner Vincent Boccio, who was on vacation and to the Supervisory Examiner Jim Grody. When Examiner Boccio came back to work he and Mr. Grody both agreed that it was a serious USPTO error and that the Applicant should not pay for it because it was their error. Examiner Boccio was told about several errors in the PAIR and Notice of Allowability which included documents from somebody else's patent application mixed with the applicant's, and regarding dates of IDS and formal drawings, and that he failed to examine the Preliminary Amendment.
3. Examiner Boccio promised to examine the claims from the Preliminary Amendment and send a Supplemental Notice of Allowability to correct the mistakes. He also promised to extend the issue fee due date because it was uncertain when his Supplemental Notice of Allowability will arrive. After several phone calls the Applicant's attorney sent a previously enclosed e-mail to Examiner Boccio, on 8/30/05, specifying the errors and the promise to extend the issue fee due date, which was confirmed in Examiner Boccio's e-mail dated 10/17/2005.
4. It was Examiner's duty to correct all the deficiencies of the Notice of Allowability in the timely manner so that the application would not get abandoned, which he promised to do. However, the Supplemental Notice of Allowability was mailed on 9/21/05. It did not extend or restart the issue fee due date of 9/19/05, although it was mailed two dates after it, on 9/21/05. It also failed to correct the formal drawings' date and enter the related applications' serial numbers. It was the Examiner's duty to withdraw the application from issue, once he realized that the Supplemental Notice of Allowability will be mailed after the issue fee due

date, under the 35 CFR Sec. 1.313, because only he knew whether he will again allow the application with all 54 claims. Applicant could not have that knowledge until the receipt of the Supplemental Notice of Allowability.

5. Another set of phone calls to the Supervisory Examiner and Examiner Boccio and e-mails to Examiner Boccio assured the Applicant's attorney that another Supplemental Notice of Allowability will be mailed, correcting all the errors, as seen in the previously enclosed e-mails. Examiner Boccio claimed that he requested the extension of time but that the support staff failed to extend or restart it. This is confirmed in paragraph #1 of the Supplemental Notice of Allowability and in his e-mail dated 10/17/05. There, however, he claims that he requested the Applicant to pay the issue fee during the 8/30/05 phone call, which is incorrect. It would show very irresponsible and very unprofessional behavior on the Examiner's part because at that time he had not even seen the Preliminary Amendment with the additional 24 claims.
6. The second supplemental notice of Allowability was mailed on 11/3/05 but again failed to extend the issue fee due date. Several e-mails, sent since then, and voice messages left on his phone were not replied to by the Examiner Boccio and PAIR did not show any improvement. Thus the first Petition for Revival was sent to the Director on 12/23/05. Payment of \$1,7000.00 for issue and publication fees and a petition fee of \$500.00 was charged to the IBM deposit account no. 09-0460.

#### A. PETITION FOR REVIVAL - ABANDONMENT WAS WRONGFUL AND IMPROPER

The entire delay in the payment of the issue fee is a result of serious errors in the PAIR and egregious errors in the original Notice of Allowability made by the USPTO and in the two Supplemental Notices of Allowability, none of which was caused or could have been prevented or cured by the Applicant.

1. Applicant's attorney would be acting very unreasonably and would be subject to disbarment if she paid the issue fee on the obviously very defective Notice of Allowability because she

would have forfeited the additional 24 claims. Applicant could not possibly know, by 9/19/05, whether the Examiner would allow the additional 24 claims from the Preliminary Amendment, because the Supplemental Notice of Allowability which allowed 24 claims from the Preliminary Amendment was mailed on 9/21/05, two days after the issue fee was due. Moreover the allowance of the original 30 claims could have been revoked.

2. Even if the Applicant had paid the issue fee by 9/19/2005, and the additional 24 claims were not allowed, under 37 CFR Sec. 1.312 the Applicant would not be able to file an amendment for these claims after the payment. Moreover, the Examiner also had the right to change his mind about the originally allowed claims so the payment of the issue fee would be improper as premature.
3. Applicant justifiably relied on the written assurances by the Examiner, as seen in the e-mails, and not only on oral promises, mentioned under 37 CFR Sec. 1.2, and there was no disagreement or doubt. Moreover, it is discussed in MPEP Sec. 711.03(c) on p. 700-184, that: "“unavoidable ” delay is the epitome of “unintentional ” delay. Thus, an intentional delay precludes revival under 37 CFR 1.137(a) (“unavoidable” delay)) or 37 CFR 1.137(b) (“unintentional ” delay)). See *Maldaque*, 10 USPQ2d at 1478. Decisions on reviving abandoned applications on the basis of “unavoidable ” delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable: The word ‘unavoidable ’ ....is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present. *In re Mattullath*, 38 App.D.C.497,514-15 (1912)(quoting *Pratt*, 1887 Dec.Comm ’r Pat.31,32 -33 (1887));see also *Winkler v.Ladd*, 221 F.Supp.550,552,138 USPQ 666,667-68 (D.D.C.1963), *aff ’d*, 143 USPQ 172 (D.C.Cir.1963);*Ex parte Henrich*, 1913 Dec.Comm’r Pat.139,141 (1913).In addition, decisions on revival are made on a “case-by-case basis, taking all the facts and circumstances into account.”*Smith v.Mossinghoff*, 671 F.2d 533,538, 213 USPQ 977,982

(D.C.Cir.1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." *Haines v. Quigg*, 673 F.Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D.Ind. 1987)." Further, on p. 700-185 the MPEP states that abandonment is not rendered unavoidable if applicant relied upon USPTO employee, but only if the delay was caused by the applicant lacked the knowledge. This is not case here because Applicant had to wait for Examiner's action of reviewing additional claims and issuing a Supplemental Notice of Allowability.

4. According to this case law, also cited on p. 2 of the Decision on Petition, Applicant's attorney behaved as a reasonably prudent and careful person because she noticed numerous errors in PAIR and three Notices of Allowability to which she alerted the USPTO, had numerous telephone conferences with the Examiner and his Supervisor and several written e-mails, because she relied upon a trustworthy agency USPTO and its worthy and reliable employees. It would be unreasonable for Applicant's attorney not to trust the USPTO and its two employees in such an important matter, where such indisputably egregious errors occurred solely by the USPTO.
5. According to the case law cited on p. 3 of the decision on Petition, "the decision on revival should be made on a case-by-case basis, taking all the facts and circumstances into account". Because it is obvious that the Applicant's attorney was diligent and could not have done anything else to prevent and cure the egregious errors, which occurred solely because of the USPTO actions, it is obvious that the holding of abandonment should be reversed.
6. Decision on Petition fails to take into consideration, or even mention, that the issue fee was not paid by 9/18/2005 because many (24) additional claims and the Preliminary Amendment were not even mentioned in the Notice of Allowability. Thus, the statement in the Notice of Allowability of the statutory 3 month period for payment of the issue fee could not have applied to this application and it was the Examiner's duty to issue a timely Supplemental Notice of Allowability or to extend or restart the issue fee payment period by vacating Notice of Allowability or withdrawing the application from issue, none of which was done, because only he knew when he would be examining the claims from the Preliminary Amendment and mailing the Supplemental Notice of Allowability. None of this was under Applicant's control because until the receipt of the written Supplemental Notice of Allowability the Applicant could not be certain about any claims in this application. Further, the cited 35 U.S.C. Sec.

151 applies to the cases where all claims were examined which is not the case here due to the egregious USPTO error.

7. Applicant should not have to pay any fees for this obviously entirely USPTO error. Even if the applicant's attorney acted unreasonably and did not trust the Examiner and his supervisor and their oral and written assurances and had mailed a Petition to Withdraw the application from the issue, when she noticed the egregious errors, the Applicant would have to pay a petition fee. Moreover, because the time for payment of the issue fee would not be stayed while the decision on the Petition was awaited it is probable that the Petition would not be received in time and would not be able to cure the errors. As stated in 37 CFR Sec. 1.313, Applicant's petition will not be effective to withdraw the application from issue unless it is actually granted before the date of issue.

Therefore, it is respectfully requested that this patent application be revived and reinstated because all the circumstances warrant the withdrawal of the holding of abandonment in this case. Further, because this is an extraordinary situation, the justice requires withdrawal of improper notice of abandonment without payment of any fees due to the egregious USPTO errors. Because it is obvious that the abandonment occurred solely due to the USPTO error, Applicant respectfully requests that the Petition fee in the amount of \$500, which was charged for the Original Petition, be credited as overpayment to the IBM deposit account No. 09-0460. According to MPEP Sec. 711.03(c) on p. 700-174, a petition fee is not required in this case because the circumstances warrant the withdrawal of the holding of abandonment because this application is not properly held abandoned due to the egregious USPTO errors.

Other two alternative petitions should only be used on the premise that an abandonment was proper, which here clearly is not the case because the abandonment should not have happened has the USPTO followed the rules. However, they are argued here only as alternative petitions.

**B. PETITION FOR REVIVAL UNDER 37 CFR 1.137(A) - ABANDONMENT WAS UNAVOIDABLE**

As shown above, the entire delay in paying the issue fee from 9/19/05 until the filing of the original petition, grantable under 37 CFR 1,137(a), was unavoidable because there were serious errors in the PAIR and in the obviously very defective original Notice of Allowability made by the USPTO and in two Supplemental Notices of Allowability, none of which was caused or could have been prevented or cured by the Applicant.

1. Applicant's attorney would be acting very unreasonably and would be subject to disbarment if she paid the issue fee on the obviously very defective Notice of Allowability because she would have forfeited the additional 24 claims. Applicant could not possibly know, by 9/19/05, whether the Examiner would allow the additional 24 claims from the Preliminary Amendment, because the Supplemental Notice of Allowability which allowed 24 claims from the Preliminary Amendment was mailed on 9/21/05, two days after the issue fee was due. Moreover the allowance of the original 30 claims could have been revoked. It was the Examiner's duty to withdraw the application from issue, once he realized that the Supplemental Notice of Allowability will be mailed after the issue fee due date, under the 35 CFR Sec. 1.313, because only he knew whether he will again allow the application with all 54 claims. Applicant could not have that knowledge until the receipt of the Supplemental Notice of Allowability.
2. Even if the Applicant had paid the issue fee by 9/19/2005, and the additional 24 claims were not allowed, under 37 CFR Sec. 1.312 the Applicant would not be able to file an amendment for these claims after the payment. Moreover, the Examiner also had the right to change his mind about the originally allowed claims so the payment of the issue fee would be improper as premature.
3. Applicant justifiably relied on the written assurances by the Examiner, as seen in the e-mails, and not only on oral promises, mentioned under 37 CFR Sec. 1.2, and there was no disagreement or doubt. Moreover, it is discussed in MPEP Sec. 711.03(c) on p. 700-184, that: "unavoidable " delay is the epitome of "unintentional " delay. Thus, an intentional delay precludes revival under 37 CFR 1.137(a) ("unavoidable" delay)) or 37 CFR 1.137(b) ("unintentional " delay)). See *Maldaque*, 10 USPQ2d at 1478. Decisions on reviving abandoned applications on the basis of "unavoidable " delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable. The word 'unavoidable

' ....is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present. *In re Mattullath*, 38 App.D.C.497,514-15 (1912)(quoting *Pratt*, 1887 Dec.Comm'r Pat.31,32 -33 (1887));see also *Winkler v.Ladd*, 221 F.Supp.550,552,138 USPQ 666,667-68 (D.D.C.1963), *aff'd*, 143 USPQ 172 (D.C.Cir.1963);*Ex parte Henrich*, 1913 Dec.Comm'r Pat.139,141 (1913).In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."*Smith v.Mossinghoff*, 671 F.2d 533,538, 213 USPQ 977,982 (D.C.Cir.1982).Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." *Haines v.Quigg*, 673 F.Supp. 314,316-17,5 USPQ2d 1130,1131-32 (N.D.Ind. 1987)." Further, on p. 700-185 the MPEP states that abandonment is not rendered unavoidable if applicant relied upon USPTO employee, but only if the delay was caused by the applicant lacked the knowledge. This is not case here because Applicant had to wait for Examiner's action of reviewing additional claims and issuing a Supplemental Notice of Allowability.

4. Because the failure occurred due to the unexpected and unforeseen fault or imperfection of the USPTO and its instrumentalities, it is proper, according to this case law, to hold that the abandonment was unavoidable because all other conditions of promptness in its rectification are present in this case.
5. According to this case law, also cited on p. 2 of the Decision on Petition, Applicant's attorney behaved as a reasonably prudent and careful person because she noticed numerous errors in PAIR and three Notices of Allowability to which she alerted the USPTO, had numerous telephone conferences with the Examiner and his Supervisor and several written e-mails, because she relied upon a trustworthy agency USPTO and its worthy and reliable employees. It would be unreasonable for Applicant's attorney not to trust the USPTO and its two



employees in such an important matter, where such indisputably egregious errors occurred solely by the USPTO.

6. According to the case law cited on p. 3 of the decision on Petition, "the decision on revival should be made on a case-by-case basis, taking all the facts and circumstances into account". Because it is obvious that the Applicant's attorney was diligent and could not have done anything else to prevent and cure the egregious errors, which occurred solely because of the USPTO actions, it is obvious that the abandonment was unavoidable.
7. Decision on Petition fails to take into consideration, or even mention, that the issue fee was not paid by 9/18/2005 because many (24) additional claims and the Preliminary Amendment were not even mentioned in the Notice of Allowability. Thus, the statement in the Notice of Allowability of the statutory 3 month period for payment of the issue fee could not have applied to this application and it was the Examiner's duty to issue a timely Supplemental Notice of Allowability or to extend or restart the issue fee payment period by vacating Notice of Allowability or withdrawing the application from issue, none of which was done, because only he knew when he would be examining the claims from the Preliminary Amendment and mailing the Supplemental Notice of Allowability. None of this was under Applicant's control because until the receipt of the written Supplemental Notice of Allowability the Applicant could not be certain about any claims in this application. Further, the cited 35 U.S.C. Sec. 151 applies to the cases where all claims were examined which is not the case here due to the egregious USPTO error.
8. Applicant should not have to pay any fees for this obviously entirely USPTO error. Even if the applicant's attorney acted unreasonably and did not trust the Examiner and his supervisor and their oral and written assurances and had mailed a Petition to Withdraw the application from the issue, when she noticed the egregious errors, the Applicant would have to pay a petition fee. Moreover, because the time for payment of the issue fee would not be stayed while the decision on the Petition was awaited it is probable that the Petition would not be received in time and would not be able to cure the errors. As stated in 37 CFR Sec. 1.313, Applicant's petition will not be effective to withdraw the application from issue unless it is actually granted before the date of issue.

Therefore, it is respectfully requested that this patent application be revived and reinstated because all the circumstances warrant the withdrawal of the holding of abandonment in this case or, alternatively, because the application was unavoidably abandoned. Further, because this is an extraordinary situation, the justice requires withdrawal of improper notice of abandonment without payment of any fees due to the egregious USPTO errors. Because it is obvious that the abandonment occurred solely due to the USPTO error, Applicant respectfully requests that the Petition fee in the amount of \$500, which was charged for the Original Petition, be credited as overpayment to the IBM deposit account No. 09-0460. According to MPEP Sec. 711.03(c) on p. 700-174, a petition fee is not required in this case because the circumstances warrant the withdrawal of the holding of abandonment because this application is not properly held abandoned due to the egregious USPTO errors.

C. PETITION FOR REVIVAL UNDER 37 CFR 1.137(B) - ABANDONMENT WAS UNINTENTIONAL

As shown above, the entire delay in paying the issue fee from 9/19/05 until the filing of a grantable petition, under 37 CFR 1.137, was also unintentional because there were serious errors in the PAIR and in the obviously very defective original Notice of Allowability made by the USPTO and in two Supplemental Notices of Allowability, none of which was caused or could have been prevented or cured by the Applicant. Applicant did not intentionally and deliberately do anything to get this application abandoned but worked very diligently to get all the claims to issue and promptly showed the USPTO all the defects in the Notice of Allowability.

1. Applicant's attorney would be acting very unreasonably and would be subject to disbarment if she paid the issue fee on the obviously very defective Notice of Allowability because she would have forfeited the additional 24 claims. Applicant could not possibly know, by 9/19/05, whether the Examiner would allow the additional 24 claims from the Preliminary Amendment, because the Supplemental Notice of Allowability which allowed 24 claims from the Preliminary Amendment was mailed on 9/21/05, two days after the issue fee was due. Moreover the allowance of the original 30 claims could have been revoked. It was the Examiner's duty to withdraw the application from issue, once he realized that the

Supplemental Notice of Allowability will be mailed after the issue fee due date, under the 35 CFR Sec. 1.313, because only he knew whether he will again allow the application with all 54 claims. Applicant could not have that knowledge until the receipt of the Supplemental Notice of Allowability.

2. Even if the Applicant had paid the issue fee by 9/19/2005, and the additional 24 claims were not allowed, under 37 CFR Sec. 1.312 the Applicant would not be able to file an amendment for these claims after the payment. Moreover, the Examiner also had the right to change his mind about the originally allowed claims so the payment of the issue fee would be improper as premature.
3. Applicant justifiably relied on the written assurances by the Examiner, as seen in the e-mails, and not only on oral promises, mentioned under 37 CFR Sec. 1.2, and there was no disagreement or doubt. Moreover, it is discussed in MPEP Sec. 711.03(c) on p. 700-184, that: "unavoidable " delay is the epitome of "unintentional " delay. Thus, an intentional delay precludes revival under 37 CFR 1.137(a) ("unavoidable" delay)) or 37 CFR 1.137(b) ("unintentional " delay)). See *Maldaque*, 10 USPQ2d at 1478. Decisions on reviving abandoned applications on the basis of "unavoidable " delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable: The word 'unavoidable ' ....is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present. *In re Mattullath* ,38 App.D.C.497,514-15 (1912)(quoting *Pratt* ,1887 Dec.Comm 'r Pat.31,32 -33 (1887));see also *Winkler v.Ladd* ,221 F.Supp.550,552,138 USPQ 666,667-68 (D.D.C.1963), *aff 'd* ,143 USPQ 172 (D.C.Cir.1963);*Ex parte Henrich* ,1913 Dec.Comm'r Pat.139,141 (1913).In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."*Smith v.Mossinghoff* ,671 F.2d 533,538, 213 USPQ 977,982 (D.C.Cir.1982).Finally, a petition cannot be granted where a petitioner has failed to meet his

or her burden of establishing that the delay was "unavoidable." *Haines v. Quigg*, 673 F.Supp. 314,316-17, 5 USPQ2d 1130,1131-32 (N.D.Ind. 1987)." Further, on p. 700-185 the MPEP states that abandonment is not rendered unavoidable if applicant relied upon USPTO employee, but only if the delay was caused by the applicant lacked the knowledge. This is not case here because Applicant had to wait for Examiner's action of reviewing additional claims and issuing a Supplemental Notice of Allowability.

4. Because the failure occurred due to the unexpected and unforeseen fault or imperfection of the USPTO and its instrumentalities, it is proper, according to this case law, to hold that the abandonment was unavoidable because all other conditions of promptness in its rectification are present in this case.
5. According to this case law, also cited on p. 2 of the Decision on Petition, Applicant's attorney behaved as a reasonably prudent and careful person because she noticed numerous errors in PAIR and three Notices of Allowability to which she alerted the USPTO, had numerous telephone conferences with the Examiner and his Supervisor and several written e-mails, because she relied upon a trustworthy agency USPTO and its worthy and reliable employees. It would be unreasonable for Applicant's attorney not to trust the USPTO and its two employees in such an important matter, where such indisputably egregious errors occurred solely by the USPTO.
6. According to the case law cited on p. 3 of the decision on Petition, "the decision on revival should be made on a case-by-case basis, taking all the facts and circumstances into account". Because it is obvious that the Applicant's attorney was diligent and could not have done anything else to prevent and cure the egregious errors, which occurred solely because of the USPTO actions, it is obvious that the abandonment was unintentional.
7. Decision on Petition fails to take into consideration, or even mention, that the issue fee was not paid by 9/18/2005 because many (24) additional claims and the Preliminary Amendment were not even mentioned in the Notice of Allowability. Thus, the statement in the Notice of Allowability of the statutory 3 month period for payment of the issue fee could not have applied to this application and it was the Examiner's duty to issue a timely Supplemental Notice of Allowability or to extend or restart the issue fee payment period by vacating Notice of Allowability or withdrawing the application from issue, none of which was done, because only he knew when he would be examining the claims from the Preliminary Amendment and

mailing the Supplemental Notice of Allowability. None of this was under Applicant's control because until the receipt of the written Supplemental Notice of Allowability the Applicant could not be certain about any claims in this application. Further, the cited 35 U.S.C. Sec. 151 applies to the cases where all claims were examined which is not the case here due to the egregious USPTO error.

8. Applicant should not have to pay any fees for this obviously entirely USPTO error. Even if the applicant's attorney acted unreasonably and did not trust the Examiner and his supervisor and their oral and written assurances and had mailed a Petition to Withdraw the application from the issue, when she noticed the egregious errors, the Applicant would have to pay a petition fee. Moreover, because the time for payment of the issue fee would not be stayed while the decision on the Petition was awaited it is probable that the Petition would not be received in time and would not be able to cure the errors. As stated in 37 CFR Sec. 1.313, Applicant's petition will not be effective to withdraw the application from issue unless it is actually granted before the date of issue.

Therefore, it is respectfully requested that this patent application be revived and reinstated because all the circumstances warrant the withdrawal of the holding of abandonment in this case or, alternatively, because the application was unintentionally abandoned. Further, because this is an extraordinary situation, the justice requires withdrawal of improper notice of abandonment without payment of any fees due to the egregious USPTO errors. Because it is obvious that the abandonment occurred solely due to the USPTO error, Applicant respectfully requests that the Petition fee in the amount of \$500, which was charged for the Original Petition, be credited as overpayment to the IBM deposit account No. 09-0460. According to MPEP Sec. 711.03(c) on p. 700-174, a petition fee is not required in this case because the circumstances warrant the withdrawal of the holding of abandonment because this application is not properly held abandoned due to the egregious USPTO errors.

#### CONCLUSION

No additional fee is required in connection with this communication since it is obvious that the abandonment occurred solely due to the USPTO error. Thus, Applicant respectfully requests that

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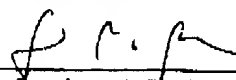
the Petition fee in the amount of \$500 which was charged for the Original Petition be credited as overpayment to the IBM deposit account No. 09-0460. If, however, there is no other way to revive this patent application a Petition Fee of \$1,500.00, if needed to revive an unintentionally abandoned application, and any additional underpayment is authorized to be charged to Deposit Account Number 09-0460 in the name of IBM Corporation. ✓

In view of the above, it is submitted that this application is now in good order for revival, which applicant respectfully solicits. Should matters remain which the Senior Petitions Attorney believes could be resolved in a telephone interview, the Attorney is kindly requested to telephone the Applicant's undersigned attorney.

Please note that the second Supplemental Notice of Allowability failed to change the formal drawings date and Applicant hereby requests use of correct formal drawings for this application, entered on 9/10/01, and not the informal drawings from 5/14/01, as incorrectly entered by the Examiner in the original Notice of Allowability.

Respectfully submitted,

Date: July 2, 2006



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